STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 17, 2014
v	No. 314285 Bay Circuit Court
ERICA CEDERBERG KAZNOWSKI, Defendant-Appellant.	LC No. 11-010979-FH

Before: STEPHENS, P.J., and HOEKSTRA and METER, JJ.

PER CURIAM.

Defendant appeals as of right from her jury convictions by a jury of conducting a criminal enterprise, MCL 750.159i, and six counts of converting funeral-home-contract funds, MCL 328.232(1). The trial court sentenced defendant to concurrent prison terms of 85 to 240 months for conducting a criminal enterprise and 40 to 60 months for converting funeral-home-contract funds. We affirm.

Defendant operated a funeral home. An investigation revealed that defendant placed funds totaling $398,689 paid by clients for prepaid funerals or funeral-insurance contracts into the funeral home's general bank account instead of placing the funds into escrow or transferring them to insurance companies as required by law. Defendant admitted placing the funds into the funeral home's general bank account, but maintained that she did so to pay for operating expenses for the funeral home.

On appeal, defendant first argues that the prosecution presented insufficient evidence at trial to support her conviction of conducting a criminal enterprise.[1] We disagree.

In reviewing a question of the sufficiency of the evidence, we view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have concluded that the elements of the offense were proven beyond a reasonable doubt. *People v Bulls*, 262 Mich App 618, 623; 687 NW2d 159 (2004). We do not interfere with the jury's role

[1] Defendant does not challenge the sufficiency of the evidence supporting her convictions of converting funeral-home-contract funds.

of determining the weight of the evidence or the credibility of witnesses. *Id*. at 623-624; *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002). A trier of fact may make reasonable inferences from direct or circumstantial evidence in the record. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

MCL 750.159i provides:

> (1) A person employed by, or associated with, an enterprise shall not knowingly conduct or participate in the affairs of the enterprise directly or indirectly through a pattern of racketeering activity.
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> (2) A person shall not knowingly acquire or maintain an interest in or control of an enterprise or real or personal property used or intended for use in the operation of an enterprise, directly or indirectly, through a pattern of racketeering activity.
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> (3) A person who has knowingly received any proceeds derived directly or indirectly from a pattern of racketeering activity shall not directly or indirectly use or invest any part of those proceeds, or any proceeds derived from the use or investment of any of those proceeds, in the establishment or operation of an enterprise, or the acquisition of any title to, or a right, interest, or equity in, real or personal property used or intended for use in the operation of an enterprise.
>
> (4) A person shall not conspire or attempt to violate subsection (1), (2), or (3).

MCL 750.159f(c) defines "pattern of racketeering activity" as follows:

> "Pattern of racketeering activity" means not less than 2 incidents of racketeering to which all of the following characteristics apply:
>
> (*i*) The incidents have the same or a substantially similar purpose, result, participant, victim, or method of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated acts.
>
> (*ii*) The incidents amount to or pose a threat of continued criminal activity.
>
> (*iii*) At least 1 of the incidents occurred within this state on or after the effective date of the amendatory act that added this section, and the last of the incidents occurred within 10 years after the commission of any prior incident, excluding any period of imprisonment served by a person engaging in the racketeering activity.

MCL 750.159g defines "racketeering," in pertinent part, as follows:

> As used in this chapter, "racketeering" means committing, attempting to commit, conspiring to commit, or aiding or abetting, soliciting, coercing, or

> intimidating a person to commit an offense for financial gain, involving any of the following:
>
> * * *
>
> (r) A felony violation of section 174, 175, 176, 180, 181, or 182, concerning embezzlement.

In *People v Martin*, 271 Mich App 280, 321; 721 NW2d 815 (2006), this Court set out the elements that must be proven in order to find a defendant guilty of conducting a criminal enterprise (racketeering):

> Consequently, in order to find defendant guilty of racketeering, the jury needed to find beyond a reasonable doubt that: (1) an enterprise existed, (2) defendant was employed by or associated with the enterprise, (3) defendant knowingly conducted or participated, directly or indirectly, in the affairs of the enterprise, (4) through a pattern of racketeering activity that consisted of the commission of at least two racketeering offenses that (a) had the same or substantially similar purpose, result, participant, victim, or method of commission, or were otherwise interrelated by distinguishing characteristics and are not isolated acts, (b) amounted to or posed a threat of continued criminal activity, and (c) were committed for financial gain. [*Martin*, 271 Mich App at 321.]

The evidence, both documentary and testimonial, produced at trial showed that defendant sold prepaid funeral packages and funeral insurance to clients but then did not handle the funds from those transactions as required by law but instead placed the funds into the funeral home's general bank account. Defendant asserts that the evidence was not sufficiently credible to support her conviction; however, the jury was entitled to weigh the credibility of the evidence and decide what evidence to accept. As noted, we do not interfere with the jury's determinations of credibility, *Bulls*, 262 Mich App at 623, and the jury was entitled to rely on circumstantial evidence to find that the elements of the offense had been proven beyond a reasonable doubt. *People v Taylor*, 275 Mich App 177, 179; 737 NW2d 790 (2007).

Defendant's argument that the prosecution failed to prove that she was an "agent, servant, or employee"[2] of the victims of her embezzlement (as was charged in the information) is without merit. Indeed, defendant herself argued below that she *did* fit within this definition when she successfully argued to the trial court that she should be charged (in the counts aside from the racketeering count) with converting funeral-home-contract funds instead of embezzlement.[3] A

[2] See MCL 750.174(1), relating to embezzlement.

[3] The prosecution had argued that defendant should have been charged (in the additional counts) with embezzlement because it contains the element of a fiduciary relationship and thus is more specific than the offense of converting funeral-home-contract funds.

party may not assert on appeal a position wholly inconsistent with a position that she unequivocally and successfully asserted below. *Szyszlo v Akowitz*, 296 Mich App 40, 50-51; 818 NW2d 424 (2012). At any rate, defendant was indeed an "agent," for purposes of the embezzlement statute, in relation to the money she obtained from her victims, because she was obligated to use those funds in a particular manner for the benefit of the victims. See, generally, *People v Artman*, 218 Mich App 236, 239; 553 NW2d 673 (1996) (affirming conviction for embezzlement by an agent in a case wherein an attorney misused funds held in trust for a client). The present situation is not, as defendant argues, analogous to a customer going into a store and purchasing something, after which the store clerk pockets the money. Defendant emphasizes that in such a situation, no embezzlement from the customer has occurred because the money belonged, at the point of conversion, to the store. In the present case, however, the money in question continued to belong to the victims and defendant did indeed embezzle it. We find no basis for reversal.[4]

Moreover, defendant's argument that the prosecution's case was untenable because no evidence showed that she had the intent to defraud at the time she took in the funds also fails. The prosecution was required to show intent to defraud at the time the money was converted, *People v Lueth*, 253 Mich App 670, 683; 660 NW2d 322 (2002), and it adequately did so.

Defendant also argues that the prosecution failed to prove that the activities in question amounted to or posed a threat of continued criminal activity, but this argument is patently without merit, seeing as defendant committed multiple acts of embezzlement. She also argues that the activities were not committed "for financial gain." This argument, too, is without merit. Indeed, the evidence established that defendant took client funds to keep the funeral home operating and admitted that she collected a salary from the funeral home.

Next, plaintiff argues that MCL 750.159i does not apply to this case. We disagree. We review de novo questions of statutory interpretation. *People v Gardner*, 482 Mich 41, 46; 753 NW2d 78 (2008).

Defendant argues that the prosecution presented insufficient evidence to establish that her racketeering activity would continue in the future, and further argues that the Legislature did not intend MCL 750.159i to apply to individuals.

These arguments are without merit. As stated above, the prosecution produced sufficient evidence to support defendant's conviction of conducting a criminal enterprise. The prosecution merely needed to show that the activities amounted to continuing criminal activity, and it did so. In addition, the prosecution presented ample evidence of the involvement of an entity other than defendant herself, i.e., the funeral home. That is all that is required under the statute. MCL 750.159i.

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[4] We note that the embezzlement statute also uses the term "bailee." See MCL 750.174(1). Although the prosecution did not use the term "bailee" in the information, we note that defendant was clearly a bailee of her victims.

Finally, defendant argues that the trial court erred in failing to provide certain jury instructions. However, defense counsel expressly answered, "No, your Honor," when the trial court asked if the attorneys had "anything on the reading of the instructions[.]" Accordingly, counsel affirmatively waived this issue. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000); *People v Lueth*, 253 Mich App 670, 688; 660 NW2d 322 (2002).

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Joel P. Hoekstra
/s/ Patrick M. Meter